

Message Text

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AMEMBASSY VIENTIANE

AMEMBASSY PHNOM PENH

INFO AMEMBASSY BANGKOK

USMISSION GENEVA

AMCONSUL DANANG

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SUBJECT:AMERICAN CIVILIANS MISSING IN INDOCHINA

1. WE HAVE BEEN REVIEWING POSSIBLE IMPLICATIONS FOR U.S.

CIVILIANS MISSING IN INDOCHINA OF FEDERAL COURT

DECISION REQUIRING MILITARY SERVICES TO ESTABLISH HEARING

PROCEDURE FOR BENEFICIARY NEXT OF KIN BEFORE CHANGING

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STATUS OF A MISSING US SERVICEMAN TO KILLED IN ACTION.

BASIS FOR THIS REQUIREMENT IS COURT'S FINDING (RECENTLY AFFIRMED BY SUPREME COURT) THAT DUE PROCESS MUST BE PROVIDED FOR NEXT OF KIN BEFORE ACTION IS TAKEN WHICH HAS EFFECT OF ENDING THEIR GOVERNMENT FINANCIAL BENEFITS.

2. SPECIFICALLY, THE COURT'S FINAL DECREE ENJOINS THE SECRETARIES OF THE MILITARY SERVICES FROM CONDUCTING STATUS REVIEWS "UNLESS THE NEXT OF KIN OF A MAN CARRIED AS MISSING IN ACTION AND CURRENTLY RECEIVING GOVERNMENT FINANCIAL BENEFITS WHICH COULD BE TERMINATED BY A STATUS REVIEW ARE GIVEN NOTICE OF A STATUS REVIEW AND AFFORDED A REASONABLE OPPORTUNITY TO ATTEND A HEARING, WITH A LAWYER IF THEY SO CHOOSE, AND ARE GIVEN REASONABLE ACCESS TO THE INFORMATION UPON WHICH THE STATUS REVIEW WILL BE BASED AND ARE PERMITTED TO PRESENT ANY INFORMATION WHICH THEY CONSIDER RELEVANT TO THE PROCEEDINGS." MCDONALD V. MCLUCAS(73 CIV. 3190) (42LW2445, 3-5-74).

3. ALTHOUGH THIS DECREE AS SUCH APPLIES ONLY TO US MILITARY PERSONNEL, WE BELIEVE THE COURT'S REASONING MAY BE APPLICABLE ALSO TO US CIVILIANS IN MISSING STATUS WHOSE DEPENDENTS ARE CURRENTLY RECEIVING USG BENEFITS, SUCH AS DETENTION BENEFITS UNDER DEPARTMENT OF LABOR WORKER'S COMPENSATION PROGRAMS. STATE AND LABOR REPS MET INFORMALLY DEC. 3 TO DISCUSS THIS SUBJECT AND AGREED TO DEFER FURTHER ACTION UNTIL DEFENSE DEPARTMENT AND MILITARY SERVICES HAVE BROADER EXPERIENCE WITH THEIR NEW MIA HEARING PROCEDURES.

4. WHILE REQUIRING DUE PROCESS PROCEDURES BE AFFORDED GENERALLY TO FAMILIES OF MIA'S, THIS DECREE ALSO GIVES BENEFITTING NEXT OF KIN RIGHT TO WAIVE PROCEDURES. PRELIMINARY ORDERS IN THIS CASE ALSO MADE CLEAR THAT PRIMARY NOK COULD REQUEST STATUS REVIEWS AT THEIR OWN INITIATIVE. WE HAVE HAD TWO SUCH REQUESTS WITH WAIVERS OF HEARINGS FROM NEXT OF KIN (WIFE, IN EACH CASE WITH CONSENT OF PARENTS) OF U.S. CIVILIANS FSS STEVEN HAUKNES (S. VIETNAM) AND EDWARD WEISSENBACK (AIR AMERICA, LAOS). IN VIEW OF THESE REQUESTS, AND IN VIEW OF THE CIRCUMSTANCES OF LOSS IN EACH CASE AND PASSAGE OF TIME WITHOUT FURTHER INFORMATION, LIMITED OFFICIAL USE

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REPORT OF THE PRESUMPTIVE DEATH OF AN AMERICAN CITIZEN (FS-192) SHOULD BE ISSUED NOW FOR THESE TWO PERSONS, LISTING CAUSE OF DEATH AS "MISSING AND PRESUMED DEAD AS RESULT OF ENEMY ACTION" AT LAST KNOWN LOCATION. (7 FAM 441.5).

5. IN CASE OF WEISSENBACK, STATE AND LABOR HAVE AGREED TO PROCEED ON THIS CASE ALONE WITHOUT AFFECTING CASES OF OTHER MEN IN SAME AIRCRAFT, IN VIEW OF COURT RULINGS GIVING BENE-

FITTING NEXT OF KIN RIGHT OF INITIATIVE, AND IN VIEW OF DEFENSE DEPARTMENT'S SIMILAR PRACTICE IN SUCH CASES. OFFICE OF WORKERS' COMPENSATION PROGRAMS WILL CONTACT MRS. WEISSENBACK TO PROCESS APPLICATION FOR DEATH BENEFITS FOR HER AND CHILDREN. AIR AMERICA HAS INFORMED DEPARTMENT THEY CONTEMPLATE LUMP SUM PAYMENT TO HER, AS PROVIDED IN MR. WEISSENBACK'S CONTRACT.

6. IN CASE OF HAUKNES, MRS. HAUKNES AND HER TWO SONS WILL BE ELIGIBLE FOR SURVIVOR'S BENEFITS UNDER LABOR DEPARTMENT'S FEDERAL EMPLOYEE'S COMPENSATION PROGRAM.

7. PLEASE ADVISE TELEGRAPHICALLY WHEN FS-192'S ARE ISSUED IN THESE TWO CASES AND POUCH THEM TO DEPARTMENT (D/PW AND SCA/SCS) FOR TRANSMITTAL TO FAMILIES. FAMILIES HOPE THIS CAN BE ACCOMPLISHED ASAP. INGERSOLL

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